

# INTERNAL REVENUE SERVICE

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Dear\*\*\*\*\*.

This letter is issued in response to your request dated July 10, 2002, pertaining to the potential rebate liability of the \*\*\*\*\* with regard to certain tax-exempt bonds issued by the \*\*\*\*\* . As discussed during a telephone conversation on July 22, 2002, we are providing you with a short description of the rebate requirements applicable to tax-exempt bonds and rules applicable to issuers that do not pay rebate timely.

Section 148(f)(1) of the Internal Revenue Code (the "Code") generally provides that a bond issue will be treated as an arbitrage issue unless the issuer pays the rebate amount determined in accordance with section 148(f)(2) of the Code. Section 148(f)(3) provides the time and manner of payment of the rebate amount. Unless an exception applies, the issuer of a bond issue is required to pay at least 90 percent of the rebate amount at least once every 5 years. Section 1.148-3(g) of the Income Tax Regulations (the "regulations") provides that such rebate payment is due no later than 60 days after the computation date to which it relates. The first computation date must be no later than the fifth anniversary date of the issue date of the bond issue.

Section 1.148-3(h)(1) of the regulations provides that a failure to pay the required rebate amount may cause the bond issue to be an arbitrage issue unless the Service determines that such failure was not due to willful neglect and the issuer promptly pays a penalty to the United States Treasury. Depending on the bond issue, the penalty may be as much as 100 percent of the rebate amount, plus interest on such amount.

Section 1.148-3(h)(3) of the regulations provides, however, that the penalty is automatically waived under certain circumstances. The penalty will not be automatically waived under this provision unless the rebate amount that the issuer failed to pay plus interest is paid within 180 days after the discovery of the failure to pay. If the Service determines that unusual circumstances exist, the Service may grant an extension of the 180-day period and a waiver of the penalty.

During our phone conversation on July 22, 2002, you stated that the rebate payment on the Bonds was not made in a timely manner. As discussed above, section 1.148-3(h)(3) of the regulations requires that the rebate payment must be made within 180 days of the discovery of the failure to pay in order for the automatic waiver of penalty to apply. Accordingly, assuming that July 22, 2002, is the date \*\*\*\*\* discovered the failure to pay rebate and the failure is not due to willful neglect, the Service will automatically waive the penalty if the rebate payment due with respect to the Bonds plus interest on such amount is paid within 180 days of July 22, 2002, or \*\*\*\*\* requests and receives an additional extension.

If \*\*\*\*\* believes that unusual circumstances exist and an extension of the 180-day period is warranted, we suggest that it request a ruling to that effect from the Office of Chief Counsel (CC:TEGE:EOEG:TEB) within 180 days of July 22, 2002. The request should be submitted in accordance with Rev. Proc. 2002-1, 2001-1 C.B. 1, to the following address: Internal Revenue Service, Attn: CC:PA:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. If you have questions concerning this matter, please contact \*\*\*\*\*, Identification Number \*\*\*\*\*, at \*\*\*\*\* (not a toll-free number).

Sincerely,

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